

HOUSE SPECIAL SESSION COMMITTEE ON ECONOMIC GROWTH AND JOB DEVELOPMENT

September 5, 2002 Hearing Room 357
1:30 pm Tapes 5 - 6

MEMBERS PRESENT: Rep. Jeff Kropf, Chair
Rep. Alan Brown
Rep. Elaine Hopson
Rep. Al King
Rep. Kathy Lowe

MEMBER EXCUSED:
Rep. Tim Knopp
Rep. Greg Smith

STAFF PRESENT: Ray Kelly, Administrator
Nancy Masee, Administrative Support

MEASURE/ISSUES HEARD: Paul Warner, Legislative Revenue Officer
Public Hearing HB 4072

These minutes are in compliance with Senate and House Rules. Only text enclosed in quotation marks reports a speaker's exact words. For complete contents, please refer to the tapes.

TAPE/#	Speaker	Comments
TAPE 05, A		
008	Chair Kropf	Opens meeting and explains the drafts of the bill won't be ready until 2:30 p.m. Recesses until then.
011	Chair Kropf	Reconvenes at 2:40 p.m. Introduces informational testimony. HB 4072 will not be heard today.
024	Rep. Alan Brown	Presents a business, LRI, that succeeded in a small Oregon town, Blachly, between Junction City and Florence. Introduces Mr. Allen to describe his business. (EXHIBIT A)
078	David Allen	President of L.R.I., Blachly, Oregon. Photon Micro-Light inventor. Describes his product as the flashlight of the future. Explains how his business grew. Describes how the construction of the lights was subcontracted to workers who were paid by the piece to work in their homes. Explains how the operation works well in their rural area. Says he considers them subcontractors. Explains that the Oregon Employment Department ruled that LRI was in violation of the law with the use of independent contractors. They said that an employee cannot legally manufacture at home. (EXHIBIT B)
174	Chair Kropf	Oregon law precludes an employee from working in their home on behalf of their employer?
200	Chair Kropf	Asks where the complaints came from in 1999.
208	Allen	We were led to believe that an employee complained but it was later clarified that the complaint came from the Employment Department.
211	Rep. Hopson	Asks if the rules were in place prior to beginning of business. Asks if there is a threshold of gross manufacturing earnings that cause new rules to be in force.

230	Allen	Responds yes. Says he is not aware that a new threshold of earnings put them in a different bracket.
230	Rep. King	Asks about patents.
240	Allen	Responds a design patent on the photon light and application patent on two new products.
243	Rep. King	Asks if the workers assemble products for other companies. Describes personal experience of a contractor defined as an employee because they did not work for anybody else.
255	Allen	Responds some do and some do not. Discusses the workers' choice of working for only one employer.
300	Rep. King	Explains how he informs his subcontractors that they need to work for more than one employer to comply with the law.
341	Fran Olson	Blachly resident. Describes subcontracting work from David Allen.
400	Alona Hartwig	Triangle Lake resident. Describes work with David Allen's business.
TAPE 6, A		
060	Hartwig	Continues explaining loss of work in her home and how it affected her life.
115	Chair Kropf	Supports working in the home.
132	Renee Bryant	Employment Department attorney. Explains that someone violated a claim for unemployment benefits which initiated this action against LRI. Explains an audit was conducted and determined that the person was an employee rather than independent contractors. The employment department requires that those working for LRI are subject to payroll tax. (EXHIBIT C)
229	Bryant	Describes the criteria in the statutes which describes independent contractors. Describes independently established business. In this case no individuals were found to be in that category.
256	Chair Kropf	Reiterates. Asks if the interpretation of the statute allows other kinds of assembly work from other employers.
292	Jayne Martin	Employment Department. Discusses working for more than one employer. Describes eight criteria.
194	Bryant	Clarifies Employment Department's position.
210	Bryant	There are a number of criteria in the statutes that describe independent contractors versus employees.
241	Chair Kropf	Asks if the interpretation of the statute by the Employment Department is inflexible
300	Rep. Hopson	Asks about the eight criteria in statute and asks for a list of those not met by the business.
320	Bryant	Describes the hearing officer's determination of LRI's meeting of criteria. Offers to get the hearing decision for Rep. Hopson.
320	Rep. King	Asks if the person was fired from LRI and would they be eligible for unemployment benefits.
345	Bryant	Answers she did not have knowledge of that. It would depend on a number of factors.
390	Martin	Adds that an assembler who does other assembly work there are three more statutory criteria to meet. Many of these assemblers did not meet any Section 8 criteria.
402	Bryant	Reads statute ORS 670.600 Direction and Control.
TAPE 5,B		
042	Bryant	LRI failed to prove the legal requirements of subcontractors and the association was classified as an employer-employee

		relationship. The Employment Department does not distinguish between assembly and manufacturing processes.
054	Chair Kropf	Asks if there are other issues such as OSHA issues.
075	Bryant	Answers to her knowledge there were not.
109	Rep. Lowe	Asks for the statutory references in writing to which this case is referred.
130	Bryant	Responds that the department would have to refer to the Department of Justice.
142	Chair Kropf	Refers to Lars Larson newspaper article relating to this case. (EXHIBIT)
240	David Allen	Discusses some of the rules that are too restrictive in his operation.
259	Rep. King	Asks if Workers Compensation has said that manufacturing cannot be done in the home.
308	Allen	Responds they were not told that.
310	Jim Welch	Oregon State Grange. Supports David Allen in his business venture. States that the statute is not relevant to today's business in the rural area. Asks to change statutes regarding independent contractor standards. Statutes appear to be biased against special conditions. Geographic location and the number of people needing this kind of work needs to be allowed.
390	Rep. Lowe	Asks what is public policy for listing criteria in the statute. Asks if there were fines.
435	Allen	Responds that they have paid all fines but sent a letter saying they disagreed with the charges.
TAPE 6,B		
010	Allen	Discusses differences in defining independent contractors. Emphasizes that he wishes to employ rural Oregonians rather than go to China for labor.
054	Bryant	Describes exclusions permitted by the federal government. Public policy has to do with should there be more exclusions or fewer exclusions.
094	Chair Kropf	Asks why the exclusions are there.
103	Bryant	Answers the Legislature determined the exclusions.
107	Welch	Discusses the employer-employee relationship chosen by the LRI workers as an independent contractor association. Says it is up to the Legislature to make changes in the statute to be compatible with present workers opportunities.
127	Chair Kropf	Agrees there needs to be change.
140	Rep. Brown	Comments that the Employment Department is carrying out the statutes as created. Suggests there is a need for change.
161	Rep. King	Discusses exceptions in the statutes.
188	Chair Kropf	Asks the Employment Department if they have information to furnish subcontractors to assist in clarification.
210	Bryant	Responds they are working on this.
237	Martin	Discusses state law has to be in compliance with federal laws of employment and also with their definition of employee.
254	Jeff Osanka	Linn Community College (LCC) instructor, Eugene, Oregon. Suggests public policy issues to be considered include certification of an independent contractor who applied for unemployment compensation and was denied. Suggests a certification process in place.
300	Chair Kropf	Reiterates that a carpenter was injured and when he made a workers compensation claim, he was asked to list his previous

324	Rep. King	employment as an independent contractor with LRI. This caused his claim to be suspect.
350	Rep. Lowe	Says the employer is not in a position to determine an independent contractor.
378	Chair Kropf	Comments that there are many independent contractors in Oregon and suggests further exploring of the issues.
		Adjourns at 4:25 p.m.

Submitted By, Reviewed By,

Nancy Massee	Ray Kelly
Committee Asssistant	Committee Administrator

EXHIBITS:

- A – “Brainstorm NW” Article, Rep. Alan Brown, 1 p**
- B – Argument, Summary, Brochure, David Allen, 25 pp**
- C – Tax Hearing Decision, Staff, 15 pp**